

REMARKS/ARGUMENTS

Claims 51, 52, 54-63, 69-83, 85-88 and 90-96 stand rejected and claims 53, 64-68, 84 and 89 objected to in the outstanding Official Action. Applicants have cancelled without prejudice claims 59, 63 and 64, have amended claims 51, 60-62, 65, 70, 71, 80-85, 92, 95 and 96, and have added newly written claims 97 and 98. Accordingly, claims 51-58, 60-62 and 65-98 are the only claims remaining in this application.

The withdrawal of the restriction requirement set out in the Official Action mailed June 27, 2008 is very much appreciated.

The Patent Office objects to the arrangement of the specification. It is appreciated that the Examiner has brought the arrangement of the specification to the applicant's attention. It is noted that the objection to the arrangement appears to be an indication that the originally filed specification and drawings (transmitted from WIPO) does not meet the formality requirements of the U.S. Patent and Trademark Office. The Patent Office is reminded that the U.S. Patent and Trademark Office must comply with all articles of the Patent Cooperation Treaty (PCT) including Article 27. It has been held that:

“if the rule and interpretation of the PTO conflicts with the PCT, it runs afoul of Article 27 of the PCT which provides in part:

- (1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.” Caterpillar Tractor v. Commissioner, 231 USPQ 590, 591 (EDVA 1986).

The Patent Office has referenced this decision in the Official Gazette dated September 9, 1986 (1070 TMOG 5).

As a consequence, the Patent Office (including the Chief Draftsman's Office) may not require specification format changes as long as the originally submitted documents comply with the PCT requirements. Inasmuch as this specification was forwarded by WIPO, by definition, it meets the PCT requirements (it is not forwarded until it does meet PCT requirements.). Therefore, the objection to the specification is respectfully traversed and reconsideration thereof is respectfully requested.

Notwithstanding the above, applicant has added headings and subheadings to the specification thereby obviating any further objection.

Claims 70 and 80-85 stand rejected under 35 USC §112 (second paragraph). With respect to claim 70, the Examiner correctly notes that, through a typographical error, claim 70 depends from itself. Claim 70 has been amended and properly depends from claim 51 as noted by the Examiner. This correction is believed to obviate any further basis for rejection of claim 70 under 35 USC §112.

Claims 80-83 are specifically rejected based upon the allegation that "the fluid gating structure" in line 1 does not have proper antecedent basis. The dependency of claim 80 has been changed from claim 73 to claim 79 and it is noted that claim 79 provides clearly antecedent basis for "the fluid gating structure" thereby obviating any further objection. Thus claims 80-83 should meet all requirements as amended.

In claim 84, the language has been amended to recite "a shutter" thereby obviating the need for antecedent basis in claim 84. The dependency of claim 85 has been changed to depend from claim 83 which provides antecedent basis for "said shutter."

In view of the above amendments in dependency and changes to the claim language, there is believed no further basis for rejection of claims 80-85 under 35 USC §112 (second paragraph) and any further rejection thereunder is respectfully traversed.

On page 10 of the outstanding Official Action, the Examiner notes that claims 53, 64-68, 84 and 89 all contain allowable subject matter if rewritten in independent form. This indication of allowable subject matter is very much appreciated.

Claim 51 has been amended to include the limitations of claim 64 (and claims 63 and 59 from which it depends) and therefore claim 51 as currently amended is believed in condition for allowance. Claims 59, 63 and 64 have been cancelled without prejudice. Accordingly, not only claim 51, but claims 52-58, 60-62, 65-83, 85-91 all of which directly or indirectly depend from claim 51 are also believed to be in condition for allowance.

Former dependent claim 84 has been rewritten in independent form incorporating the limitations of claims 73, 72 and 51 from which it previously depended. As such, claim 84 is now believed to be allowable.

Claims 92, 95 and 96 have been amended to incorporate the subject matter of claim 64 (and claims 63, 59 and 51 from which claim 64 depended), thereby placing them in condition for allowance.

Newly written dependent claim 97 has been added further limiting claim 51 which is believed to be in condition for allowance. Finally, newly written independent claim 98 has been submitted which is a literal combination of allowable claim 53 including the limitations of claim 51 from which it depended. Consideration of the newly submitted claims is requested.

In view of the above amendments, all pending claims are believed to be in condition for allowance and notice to that effect is respectfully requested. The remaining non-allowed

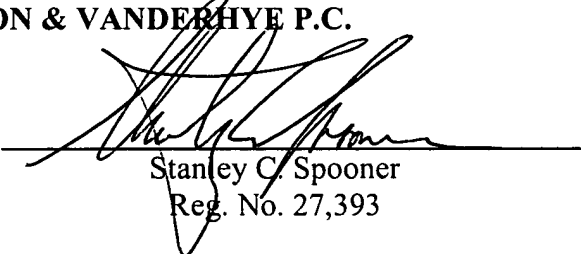
claims 59, 63 and 64 have been cancelled without prejudice. In view of the fact that there are no non-allowed claims remaining, there is no need to respond to the rejection of claims under 35 USC §102 or 35 USC §103 and any further rejection thereunder is respectfully traversed.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 51-58, 60-62 and 65-98 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

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